



## TRUSTEES FOR ALASKA

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### VIA EMAIL

October 2, 2018

Regional Freedom of Information Officer  
U.S. Environmental Protection Agency, Region 10  
Office of Ecosystems, Tribal and Public Affairs,  
1200 6<sup>th</sup> Avenue ETPA-124  
Seattle, WA 98101  
E-mail: r10.foia@epa.gov

### **Re: Freedom of Information Act Request regarding NEPA for the Pebble Mine Project**

Dear Region 10 FOIA Officer:

Trustees for Alaska requests copies of the following documents, pursuant to the Freedom of Information Act, 5 U.S.C. § 552.

Within 20 working days of your receipt of this letter, please provide me with copies of the following documents in the possession of the U.S. Environmental Protection Agency (EPA):

1. EPA comments and communications regarding the U.S. Army Corps of Engineers' Draft Scoping Report prepared for the proposed Pebble mine project National Environmental Policy Act (NEPA) process. Communications should include all EPA emails that include [poaspecialprojects@usace.army.mil](mailto:poaspecialprojects@usace.army.mil) either as recipient, cc, or sender.
2. Internal and external EPA comments and communications regarding draft Environmental Impact Statement (EIS) chapters for the proposed Pebble Mine EIS.
3. EPA communications, both sent and received, with Pebble Limited Partnership, as well as EPA minutes and notes from any meetings, in person or telephonically, with Pebble Limited Partnership from October 2017 to present.

The term “documents” should be given the broadest possible interpretation and includes but is not limited to correspondence, memos, notes of meetings and telephone calls, electronic communications, reports, powerpoints, and facsimiles.

In responding to this request, please include relevant documents that are in the possession of any office of the EPA.

If you determine that portions of any of the requested documents are exempt from release, please segregate those portions, identify and describe the withheld portions, specify the applicable exemption, and release the remainder of the document. We encourage you to release any documents that may technically be shielded by exemptions if there is no purpose served by withholding the requested documents.

We also request a waiver of any fees associated with this request. Under FOIA, “[d]ocuments shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l). Pursuant to EPA’s FOIA regulations, fee waivers are decided on a case-by-case basis, and permitted where the disclosure “is in the public interest because its release is likely to contribute significantly to public understanding of the operations or activities of the government,” and the information “is not primarily in the commercial interest of the requester.” 40 C.F.R. § 2.107(l)(1). In making this determination, the EPA considers six factors. 40 C.F.R. § 2.107(l)(2) & (3).

1. The subject of this request concerns “operations or activities of the government.” 40 C.F.R. § 2.107(l)(2)(i).

The requested information will provide meaningful insight into the operations of the EPA. The documents will shed light on the EPA’s process for evaluating the proposed Pebble mine and are not duplicative of any information currently available to the public.

There is a clear connection between the requested records and Trustees for Alaska’s interest in and desire to inform the public about EPA’s activities related to Pebble’s potential hardrock mining activity in the Bristol Bay watershed. This FOIA request seeks information relevant to the Pebble mine permit review process. The information is not currently available to the public, and Trustees for Alaska intends to use these documents to provide the public with a better understanding of the review process moving forward. Thus, the request concerns “operations and activities of the government” and this factor is satisfied.

2. Disclosure of the information is “likely to contribute” to an understanding of government operations and activities. 40 C.F.R. § 2.107(l)(2)(ii).

The focus of this request is documents that will inform the public about the review of the proposed project and how it will impact the watershed. This will help the public understand the impacts of the project as a whole and the EPA's decision-making process. Accordingly, disclosure of the requested information will contribute significantly to public understanding of the government's process and procedure. Thus, the information is "likely to contribute" to an understanding of both past and potentially future agency decisions and activities and this factor is satisfied.

3. Disclosure of the information will contribute to the "public understanding" of the subject. 40 C.F.R. § 2.107(l)(2)(iii).

Disclosure of these records will further the understanding of the public at large and is likely to be of interest to a broad audience. Trustees for Alaska is a public-interest non-profit environmental law firm that uses the law to protect and defend Alaska's lands, waters, wildlife and people. The requested documents will undergo scientific and legal scrutiny by Trustees for Alaska to further the goals of protecting the Bristol Bay watershed, ensuring compliance with applicable laws and facilitating meaningful participation by citizens in future permitting decisions and review under NEPA.

Trustees for Alaska possesses the experience and expertise necessary to evaluate the requested information and provide it to the public in a useful form. It is highly qualified to extract, synthesize, analyze, and convey the requested information to its members, other organizations, and the public at large in a way that will significantly contribute to understanding of the subject by the general public and improve its understanding of the proposed Pebble mine and impacts associated with mining in this sensitive environment. It will use this expertise to analyze and evaluate the information provided and provide these analyses and evaluations to members and the general public. *Cf. W. Watersheds Proj. v. Brown*, 318 F. Supp. 2d 1036, 1040 (D. Idaho 2004).

Trustees for Alaska has a history of disseminating information similar to that requested here to help inform the public and encourage participation in future planning and permitting processes. It will disseminate the information through various means, including blog posts, direct-mail letters, newsletters, reports, magazine articles, electronic action alerts, and through other formal and informal communications. This type of public dissemination is sufficient to warrant a fee waiver. *See* 40 C.F.R. § 2.107(l)(2)(iii); *W. Watersheds Proj.*, 318 F. Supp. 2d at 1041.

4. The disclosure is likely to "significantly" contribute to the public's understanding of the government's operations and activities. 40 C.F.R. § 2.107(l)(2)(iv).

The proposed Pebble mine is of broad public interest. The requested documents contribute to a better understanding of the permit and NEPA review moving forward. Thus, the information will "significantly" contribute to the public's understanding of the subject and this factor is satisfied.

5. Trustees for Alaska does not have a “commercial interest” that would be furthered by the disclosure. 40 C.F.R. § 2.107(l)(3)(i).

Trustees for Alaska intends to use information and documents obtained through this FOIA request to develop and publicize an understanding of the review proves and associated impacts from a proposed Pebble mine on the watershed.

Trustees for Alaska is a nonprofit organization that has no commercial interest in the requested records. *See* 40 C.F.R. § 2.107(l)(3)(i). The materials discussed above, including the publications, websites, comments, and newsletters, are freely available to the public at no cost. Thus, Trustees for Alaska has no commercial interest that would be furthered by disclosure, and this factor is satisfied.

6. Disclosure is not “primarily” in the commercial interests of the requester. 40 C.F.R. 2.107(l)(3)(ii).

There is no commercial interest in the dissemination of the information either as a primary or secondary interest, and thus, this factor is satisfied.

Based on the foregoing discussion, this fee waiver request meets the FOIA regulation requirements and a fee waiver should be granted. However, if the EPA determines that the fee waiver should not be granted, we request that you contact us prior to incurring any fees completing the FOIA request.

We request that the EPA respond within twenty (20) working days, as required by law. If the agency chooses to withhold any documents from disclosure pursuant to FOIA exemptions, we request that it: (i) identify each such document with particularity (including title, subject, date, author, recipient, and parties copied); (ii) explain in full the basis on which non-disclosure is justified; and (iii) provide us with any portions of the documents which may be segregated and for which a specific exemption is not claimed.

Please produce the records described above on a rolling basis; at no point should the search for—or deliberation concerning—certain records delay the production of others that the agency has already retrieved and elected to produce.

If you have any questions regarding the scope of this request, please do not hesitate to contact me at (907) 433-2007 or by email at [blitmans@trustees.org](mailto:blitmans@trustees.org) or Jenni Frost at (907) 276-4244 x 116 or by email at [jfrost@trustees.org](mailto:jfrost@trustees.org). Thank you for your prompt attention to this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brett Blitman".

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Brian Litmans  
Senior Staff Attorney  
Trustees for Alaska  
blitmans@trustees.org  
(907) 433-2007